

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1159-MSW-E TCEQ ID: RN105228365 CASE NO.: 34215
RESPONDENT NAME: Steve Claubaugh dba Discount Materials

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Discount Materials, 4705 West Industrial Avenue, Midland, Midland County</p> <p>TYPE OF OPERATION: Mulching and composting recycling facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received March 20, 2007, alleging that trash and construction material was being blown from the site. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 31, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Colin Barth, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0086; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Steve Claubaugh, Owner, Discount Materials, 4705 West Industrial Avenue, Midland, Texas 79703 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: March 20, 2007</p> <p>Date of Investigation Relating to this Case: May 25, 2007</p> <p>Date of NOV/NOE Relating to this Case: June 4, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation. Two violations were documented.</p> <p>AIR</p> <p>1) Failure to demonstrate financial assurance for closure, post closure, and corrective action. Specifically, the facility began operations in July of 2005 without proper financial assurance [30 TEX. ADMIN. CODE §§ 37.921(a) and 328.5(d)].</p> <p>2) Failure to notify the agency prior to engaging in recycling operations. Specifically, the facility began operations in July of 2005 without notifying the agency [30 TEX. ADMIN. CODE §§ 328.5(b) and 328.4(b)].</p>	<p>Total Assessed: \$4,000</p> <p>Total Deferred: \$800 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$160 (remaining \$3,040 due in 19 monthly payments of \$160 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent submitted a Notice of Intent and Core Data Form to the TCEQ on May 25, 2007.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit documents that demonstrate acceptable financial assurance for closure of the Facility has been obtained.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provision No. a.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ
DATES

Assigned 11-Jun-2007

PCW 18-Jul-2007

Screening 18-Jul-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Steve Claubaugh dba Discount Materials

Reg. Ent. Ref. No. RN105228365

Facility/Site Region 7-Midland

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 34215

Docket No. 2007-1159-MSW-E

Media Program(s) Municipal Solid Waste

Multi-Media

No. of Violations 2

Order Type 1660

Enf. Coordinator Colin Barth

EC's Team Enforcement Team 7

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0% Enhancement

Subtotals 2, 3, & 7 \$0

Notes

No previous compliance history.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5 \$0

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement*

Subtotal 6 \$0

Total EB Amounts \$3,435
Approx. Cost of Compliance \$1,218

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$4,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Adjustment \$0

Notes

Final Penalty Amount \$4,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$4,000

DEFERRAL

20%

Reduction

Adjustment -\$800

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$3,200

Screening Date 18-Jul-2007

Docket No. 2007-1159-MSW-E

PCW

Respondent Steve Claubaugh dba Discount Materials

Policy Revision 2 (September 2002)

Case ID No. 34215

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105228365

Media [Statute] Municipal Solid Waste

Enf. Coordinator Colin Barth

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 18-Jul-2007	Docket No. 2007-1159-MSW-E	PCW
Respondent Steve Claubaugh dba Discount Materials		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 34215		<small>PCW Revision June 26, 2007</small>
Reg. Ent. Reference No. RN105228365		
Media [Statute] Municipal Solid Waste		
Enf. Coordinator Colin Barth		
Violation Number	<div style="border: 1px solid black; text-align: center; width: 100px;">1</div>	
Rule Cite(s)	<div style="border: 1px solid black; padding: 5px;">30 Tex. Admin. Code §§ 37.921(a) and 328.5(d)</div>	
Violation Description	<div style="border: 1px solid black; padding: 5px;">Failed to demonstrate financial assurance for closure, post closure, and corrective action, as documented during an investigation conducted on May 25, 2007. Specifically, the facility began operations in July of 2005 without proper financial assurance.</div>	
Base Penalty		<div style="border: 1px solid black; text-align: right;">\$10,000</div>

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	Percent <div style="border: 1px solid black; text-align: right;">0%</div>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	x	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	Percent <div style="border: 1px solid black; text-align: right;">10%</div>				

Matrix Notes	<div style="border: 1px solid black; padding: 5px;">100% of the rule requirement was not met.</div>
---------------------	---

Adjustment	<div style="border: 1px solid black; text-align: right;">\$9,000</div>
	<div style="border: 1px solid black; text-align: right;">\$1,000</div>

Violation Events

Number of Violation Events	<div style="border: 1px solid black; text-align: center;">3</div>		<div style="border: 1px solid black; text-align: center;">747</div> Number of violation days	
<small>mark only one with an x</small>	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	Violation Base Penalty <div style="border: 1px solid black; text-align: right;">\$3,000</div>	
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	quarterly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	annual	x		
	single event	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
Three annual events are recommended one for each year the facility operated without financial assurance.				

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <div style="border: 1px solid black; text-align: right;">\$3,207</div>	Violation Final Penalty Total <div style="border: 1px solid black; text-align: right;">\$3,000</div>
This violation Final Assessed Penalty (adjusted for limits) <div style="border: 1px solid black; text-align: right;">\$3,000</div>	

Economic Benefit Worksheet**Respondent** Steve Claubaugh dba Discount Materials**Case ID No.** 34215**Reg. Ent. Reference No.** RN105228365**Media** Municipal Solid Waste**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,018	1-Jul-2005	25-Mar-2008	3.0	\$153	\$3,054	\$3,207
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain financial assurance for closure, post closure, and corrective action from the date the facility began operation to the estimated date of compliance.

Approx. Cost of Compliance

\$1,018

TOTAL

\$3,207

Screening Date 18-Jul-2007**Docket No.** 2007-1159-MSW-E**PCW****Respondent** Steve Claubaugh dba Discount Materials

Policy Revision 2 (September 2002)

Case ID No. 34215

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105228365**Media [Statute]** Municipal Solid Waste**Enf. Coordinator** Colin Barth**Violation Number** 2**Rule Cite(s)**

30 Tex. Admin. Code §§ 328.5(b) and 328.4(b)

Violation Description

Failed to notify the agency prior to engaging in recycling operations, as documented during an investigation conducted on May 25, 2007. Specifically, the facility began operations in July of 2005 without notifying the agency.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%**Matrix Notes**

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 154 **Number of violation days**mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation**Statutory Limit Test****Estimated EB Amount** \$228**Violation Final Penalty Total** \$1,000**This violation Final Assessed Penalty (adjusted for limits)** \$1,000

Economic Benefit Worksheet

Respondent Steve Claubaugh dba Discount Materials
Case ID No. 34215
Reg. Ent. Reference No. RN105228365
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$200	1-Jul-2006	25-May-2007	2.8	\$28	\$200	\$228

Notes for AVOIDED costs

Estimated cost to notify the agency prior to commencing recycling activities. The date required is the date in which operations commenced and the final date is the date of compliance.

Approx. Cost of Compliance

\$200

TOTAL

\$228

Compliance History

Customer/Respondent/Owner-Operator:	CN603272089	CLAUBAUGH, STEVE	Classification:	Rating:
Regulated Entity:	RN105228365	DISCOUNT MATERIALS	Classification:	Site Rating:
ID Number(s):				
Location:	4705 W INDUSTRIAL, MIDLAND, TX, 79703			
TCEQ Region:	REGION 07 - MIDLAND			
Date Compliance History Prepared:	December 12, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 17, 2002 to July 17, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Colin Barth	Phone:	239-0086	

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- | | |
|------------------------|---|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. |
| | N/A |
| B. | Any criminal convictions of the state of Texas and the federal government. |
| | N/A |
| C. | Chronic excessive emissions events. |
| | N/A |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) |
| | 1 06/05/2007 (562136) |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.) |
| | N/A |
| F. | Environmental audits. |
| | N/A |
| G. | Type of environmental management systems (EMSs). |
| | N/A |
| H. | Voluntary on-site compliance assessment dates. |
| | N/A |
| I. | Participation in a voluntary pollution reduction program. |
| | N/A |
| J. | Early compliance. |
| | N/A |
| Sites Outside of Texas | |
| | N/A |

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
STEVE CLAUBAUGH DBA
DISCOUNT MATERIALS
RN105228365**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1159-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Steve Claubaugh dba Discount Materials ("Mr. Claubaugh") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Claubaugh appear before the Commission and together stipulate that:

1. Mr. Claubaugh owns and operates a mulching and composting recycling facility at 4705 West Industrial Avenue in Midland, Midland County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and Mr. Claubaugh agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Claubaugh is subject to the Commission's jurisdiction.
4. Mr. Claubaugh received notice of the violations alleged in Section II ("Allegations") on or about June 9, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Claubaugh of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Four Thousand Dollars (\$4,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Claubaugh

has paid One Hundred Sixty Dollars (\$160) of the administrative penalty and Eight Hundred Dollars (\$800) is deferred contingent upon Mr. Claubaugh's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Claubaugh fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Claubaugh to pay all or part of the deferred penalty.

The remaining amount of Three Thousand Forty Dollars (\$3,040) of the administrative penalty shall be payable in 19 monthly payments of One Hundred Sixty Dollars (\$160) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Claubaugh fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Claubaugh to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Claubaugh to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Claubaugh have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Mr. Claubaugh submitted a Notice of Intent and Core Data Form to the TCEQ on May 25, 2007.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Claubaugh has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Mr. Claubaugh is alleged to have:

1. Failed to demonstrate financial assurance for closure, post closure, and corrective action, in violation of 30 TEX. ADMIN. CODE §§ 37.921(a) and 328.5(d), as documented during an investigation conducted on May 25, 2007. Specifically, the Facility began operations in July of 2005 without proper financial assurance.

2. Failed to notify the agency prior to engaging in recycling operations, in violation of 30 TEX. ADMIN. CODE §§ 328.5(b) and 328.4(b), as documented during an investigation conducted on May 25, 2007. Specifically, the Facility began operations in July of 2005 without notifying the agency.

III. DENIALS

Mr. Claubaugh generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Claubaugh pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Claubaugh's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Steve Claubaugh dba Discount Materials, Docket No. 2007-1159-MSW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Mr. Claubaugh shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, submit documents that demonstrate acceptable financial assurance for closure of the Facility has been obtained, in accordance with 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my

inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Midland Regional Office
Texas Commission on Environmental Quality
3300 North A Street, Building 4, Suite 107
Midland, Texas 79705-5404

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Claubaugh. Mr. Claubaugh is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Claubaugh fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Claubaugh's failure to comply is not a violation of this Agreed Order. Mr. Claubaugh shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Claubaugh shall notify the Executive Director within seven days after Mr. Claubaugh becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Claubaugh shall be made in writing to the Executive Director. Extensions are not effective until Mr. Claubaugh receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Claubaugh in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by

facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

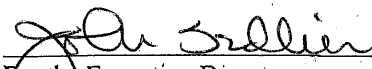
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Claubaugh, or three days after the date on which the Commission mails notice of the Order to Mr. Claubaugh, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Steve Claubaugh dba Discount Materials
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

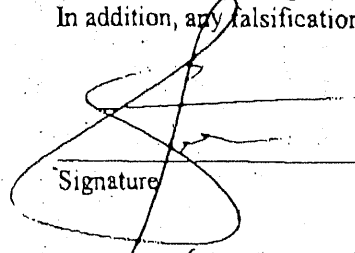
12/20/2007
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

12/12/07
Date

Steven E Claubaugh
Name (Printed or typed)
Authorized Representative of
Steve Claubaugh dba Discount Materials

owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

